

REPORT ON INDEPENDENT CONTRACTORS STATUS OF AAA YELLOW CAB IN TUCSON AND TAXI DRIVERS IN THE TUCSON VICINITY

INTRO

The purpose of this report is to inform all interested parties and the public as to how deregulation and the change in status of drivers in the taxi industry from employee to independent contractor has affected their working conditions, their health and welfare, and the ability of drivers to change any unsuitable situation(s). While the declining conditions and income are not endemic to the Tucson area, this report, however, will primarily focus on AAA Yellow Cab since their history in Tucson is by far the longest. Also, they are the largest taxi business and most diverse in operations. The information provided is as accurate and factual as possible.

DEREGULATION

Deregulation of the motor carrier industries in Arizona took effect on July 1, 1982, which mainly affected the taxi industry. The removal of all state regulations allowed the entry of any party into the taxi business in any market. While the intentions of deregulation may have been to improve services and lower costs to customers by increasing competition, the results have been devastating to the drivers' welfare and less than desirable for the public.

WHAT IS AN INDEPENDENT CONTRACTOR

ARS 23-902. An independent contractor is a person engaged in work for a business, and who while so engaged is independent of that business in the execution of the work and not subject to the rule or control of the business for which the work is done, but is engaged only in the performance of a definite job or piece of work, and is subordinate to that business only in effecting a result in accordance with that business design.

ARS 23-902. The business and the independent contractor may prove the independent contractor relationship through a written agreement that states that the business:

- Does not require the independent contractor to perform work exclusively for the business.
- Does not provide the independent contractor with any business registrations or licenses required to perform the specific services set forth in the contract.
- Does not pay the independent contractor a salary or hourly rate instead of an amount fixed by contract.

- Will not terminate the independent contractor before the expiration of the contract period, unless the independent contractor breaches the contract or violates state law.
- Does not provide tools to the independent contractor.
- Does not dictate the time of performance.
- Pays the independent contractor in the name appearing on the written agreement.
- Will not combine business operations with the person performing the services rather than maintaining these operations separately.

With these descriptions of an independent contractor as a guide, this report intends to show how over time the status of the drivers has actually changed to that of an employee. We contend there actually are no independent contractors in the taxi industry.

THE COMPANIES

There are three major taxi companies in Tucson: AAA Yellow Cab, Total Transit LLC (Discount Cab), and American Taxi Management (VIP/Flash Taxi). All three companies use the same mobile data dispatching system, Mobile Knowledge. As mentioned before, the main focus will be on AAA Yellow Cab. The other two major companies will be briefly described at the end of the report, along with the multitude of small companies that exist in the Tucson market.

DISPATCHING SYSTEMS AND CHANGES TO THE PRESENT

Before the introduction of mobile dispatching systems and terminals (MDT), most large taxi fleets used radio dispatching to disseminate calls to the cabs. Designated stands, located throughout the city, were used to locate taxis closest to the fare(s) waiting. While there were flaws in the system, for the most part it was fair since the drivers could hear what, where and how the business was being conducted. But, when the business volume began to increase, radio dispatching proved to be too cumbersome and slow.

In the late Nineties (exact date unknown), dispatching at Tucson Yellow Cab was computerized. (To avoid confusion, Yellow Cab, the only taxi company in Tucson, was sold to Yellow/Checker from Phoenix in 1982, and remained in ownership until approximately 2001, when AAA Transportation acquired the company and became AAA Yellow Cab.) The first system used was Digital Dispatching System (DDS). After a period of adjustments, the system went from using zones to locate cabs and dispatch calls to solely using Global Positioning System (GPS). In other words, the zones were only used to inform drivers where calls were holding. A limit of approximately three miles was set, and no driver was offered a call beyond set limit, regardless of what zone he was in at the moment. The cab was always in the center of a circle with a three mile radius, and the driver had the option to move in the direction where business appeared (as indicated on the call waiting screen of the MDT). The system did not try to force the driver to move in any direction; the choice was entirely the driver's. When a fare offering appeared on the MDT to a specific cab, it gave the street name and block number, and as to whether it was cash, voucher or credit card. The driver had complete freedom to accept or reject a call. Since Tucson Yellow Cab had few voucher contracts, pressure to accept them as fares was minimal. Also, some of the vouchers paid the meter rate, minus traffic

delay time. The system operated within the parameters of the drivers' status as independent contractors: complete freedom to accept/reject fares without penalty, the ability to position him or herself to receive calls without having to travel long distances, and the ability to make an informed choice of a call, based on the specifics given in the initial job offer on the MDT.

When AAA Transportation (Phoenix based) bought Tucson Yellow Cab and became AAA Yellow Cab, the company immediately informed the drivers they were primarily a voucher transportation enterprise and presented all the changes in operations: (1) While the same dispatching system (DDS) would remain, jobs or calls would be offered by zone, without location details; (2) No attribute as to whether the job was cash, credit card or voucher would be shown in the initial job offering; (3) Once a job was accepted, it could not be turned back; and (4) Vouchers would be paid at a flat rate of \$1.00 per mile. The company made it clear no changes would be negotiated, and the drivers could TAKE IT OR LEAVE IT!

The drivers petitioned the National Labor Relations Board for a hearing, claiming their status as independent contractors had been compromised by the company's change in operations and had made the drivers employees, and were granted a hearing. Although the NLRB eventually ruled in favor of the company, the company acquiesced to the drivers' demands and reinstated how DDS had operated before, and increased the vouchers to \$1.20 per mile with a \$7.00 minimum. The dispatch system remained the same until a new computerized dispatching system (Mobile Knowledge) was installed. Then, everything changed again, but more on that, later.

VOUCHERS

Vouchers are the mainstay and primary concern of AAA Yellow Cab and its parent company. Most of their contracts are with AHCCCS healthcare providers, but any company or organization can contract with AAA Transportation for services under the voucher system. How much or how AAA Transportation is paid is difficult to ascertain since no one is forthcoming with any reliable information, but one can only surmise the sum is formidable since AAA Transportation invests heavily on maintaining their contracts with AHCCCS and the providers. To handle the anticipated increase in voucher business, a supposedly separate entity (MTBA) was created. Later, the call center in Tucson was eliminated, relocated and consolidated in Phoenix, perhaps to improve control. In any case, the importance of vouchers for AAA Transportation cannot be overstated.

When AAA Yellow Cab finally reinstated the DDS system, as mentioned before, vouchers were paid at the rate of \$1.20 per mile, with a flag drop of \$1.00, and a minimum of \$7.00 for the first five miles. Most drivers accepted the voucher fares since the disparity between voucher and regular cash calls (cash fares, if memory is correct, paid \$1.50 per mile, with a \$1.75 flag drop) was relatively small, and the experienced drivers could make a knowledgeable choice to accept/reject the call by the information provided on the MDT. At first, there was little dissention toward the way business was being conducted until the drivers became aware of a major flaw in the system.

After awhile, it became apparent cash calls were not being dispatched so long as there were voucher fares still holding in the zone ahead of the cash calls. Tucson management

was confronted about the problem, but they denied it existed, and nothing changed. The major concern was that the system was trapping cash business behind voucher calls, and, eventually, it would hurt cash business since people would tire of waiting to be picked up by Yellow Cab, and would turn to other companies or find other modes of transportation. Over time, cash business began to wane, and the drivers suffered a drop in income which forced more drivers to accept vouchers again. The problem with vouchers, though, is the delay in payment (sometimes as long as a day or more), and many times the drivers found themselves cash poor which created a fiercer competition for cash business and a further drop in income for all. Hostility toward the company spread since many drivers felt the company did not care about cash business, but only about the vouchers. The company did nothing to persuade the drivers otherwise.

A few years later, the vouchers rates were changed. The change corresponded with an increase in the leases and a raise in cash fare rates. The \$1.00 flag drop was eliminated from the vouchers and rates were increased to \$1.30 per mile and the minimum was raised to \$8.50 for the first six miles. The next mile, however, only paid an additional .60 cents. The meager increase of a dime per mile only exacerbated the dissatisfaction of the drivers toward vouchers and the number of drivers refusing to take vouchers increased. Meanwhile, the cash business continued to decrease, resentment toward vouchers increased, and the company did nothing to improve conditions, and everything came to a stalemate. The situation remained the same until the company changed dispatching systems.

VEHICLES AND EQUIPMENT

AAA Yellow Cab owns all the vehicles and equipment installed in the taxis, town cars, and stretcher and wheelchair vans (there are one or two owner/operators who still own their own taxis, but the MDT's and CB radios, taxi meters, top hats, advertising racks, etc. are company property). Drivers are not permitted to alter or add anything to the vehicles or equipment, without exception.

Our question is: How does the status of independent contractor fit the drivers if one of the definitions states the company will not provide tools to independent contractors, yet the company owns all the vehicles and equipment? Are MDT's, CB radios, taxi meters and GPS antennas not tools and equipment? The company may argue that the driver is not required to use any of those items mentioned above to conduct business, but they cannot deny the fact the driver is required to have the taxi meter on while carrying a passenger, nor the fact that a taxi is also a tool of the trade. Drivers who operate the stretcher or wheelchair vans (who are also classified as independent contractors) would find it impossible to perform their jobs without using the equipment supplied by the company. How could town car drivers (who are required to be present and service certain sites) do their jobs without using only certain vehicles owned by the company? The company, also, makes it very clear that any calls received through their calls centers are the exclusive property of the company. How, then, can the person performing the services maintain separate operations if they have to use company tools and equipment to perform said services? It would seem impossible and still be an independent contractor.

Most taxis have a sign rack attached on the roof, which the company uses to display advertisements. The drivers have no input or control as to what is put in the sign racks,

and often have to use vehicles displaying information contrary to their own interests. There is no way to avoid advertising for the company's interests and gains while driving their equipment, and, what is worse, the driver gets no monetary benefit in doing so.

LEASES AND DRESS CODES

Anyone who drives a taxi, town car, or a stretcher or wheelchair van pays a lease and is classified an independent contractor at AAA Yellow Cab. The company has a few AAA Medex drivers, but they are employees and most operate out of town in specific areas of the state. The leases and methods of payment vary according to the type of vehicle the driver chooses to operate, if they are qualified. It must be noted at this point, however, there is no assignment of a particular vehicle to a particular driver. Also, it is important to know the company requires a security deposit of \$1,500, to be paid in \$5.00 increments per lease until the deposit is paid in full. If the driver has no chargeable accidents, the deposit, or whatever has been paid toward it, is returned upon request when the driver terminates his/her contract. These items are very important since they could affect the choice a driver might make in selecting a lease.

Taxi drivers have the largest choice of leases to choose from, and consist of the largest group of operators, by far. On the surface, it may appear they have more freedom to come and go and work at their leisure. But this is far from the truth. Sure, a driver has the choice to work or not, and he can choose his hours and days, and the type of lease he wants, but there are subtle pressures and circumstances beyond his/her control that actually limits those choices. We will leave new drivers and the special leases they are eligible for, out of the discussion since their status does not last very long. Normally, drivers can choose between a 12 hour (casual), a 24 hour (solo, or a split with co-driver at an increased rate), or a weekly lease (solo, or a split with co-driver at an increased rate).

It would not be inappropriate to state at this moment that the company prefers drivers to commit to a weekly lease, solo or with a co-driver. AAA Transportation, as mentioned before, regards itself a voucher company, and the voucher business is their mainstay. Therefore, they strive to keep as many taxis on the street as possible to make sure the voucher business is covered; weekly leases assure this happens, and the company has many ways of manipulating how this occurs. First, the difference between a casual (12) and a weekly (solo, pay daily) lease is very small, \$3.00 to be exact; second, many times there are not any cars available, or the choice of cabs are, to say the least, undesirable (this stems from the policy of not assigning cabs, which forces drivers, if they want a clean, reliable cab they want to keep or control to sign weekly leases, perpetually); third, reliable night drivers who want to work consistently, much less seven days a week, are almost impossible to find. Therefore, most drivers are practically cornered into a weekly lease by their selves; fourth, the cashier cage hours, where a driver obtains and pays a lease, is open only from 5 AM to 9 PM, which restricts the hours for casual drivers, who, overtime become frustrated and quit or sign a weekly lease to secure a car and drive the hours they prefer. Also, recently, anyone taking a 12 or 24 hour lease has to prepay. The pressures to take a weekly lease may be subtle, but effective.

Drivers who want to service the airport only, have to be qualified by the company (taxis and all ground transportation is controlled by the airport authority), and only have one type of lease: a prepaid weekly, and can be co-contracted. The taxis and drivers are

restricted to the airport and are not supposed to pick up street calls. Town car drivers are also restricted to weekly leases, one person per car, but can pay daily, and the cost of the lease depends on the model of vehicle they choose to drive (two types only). The town cars are primarily contracted to service a specific resort hotel, and must remain there most of their duty time, with limited time to do personals. Stretcher and wheelchair van drivers also only have two different types of leases, and pay daily. While van drivers have the right to reject calls, most of their business is directed by office personnel who handle voucher requests for service, and the driver is expected to comply. As with taxi drivers, everybody pays for their own fuel costs, though their freedom of movement can hardly be called independent.

It must be mentioned, at this point, the company has several drivers who volunteer for the position of road supervisor. They are considered independent contractors but their leases are considerably lower than the normal rates paid by the rest of the drivers. The company provides them with equipment to investigate accidents and incidents, file reports, and have the authority to pull drivers off the street if deemed necessary. The road supervisor is compensated additionally, apart from the reduced lease, for his/her work. They must wear a yellow polo shirt, identifying them as a road supervisor.

Dress codes for street taxi drivers are, for the most part, fairly relaxed. Neatness and good hygiene are promoted, but seldom enforced. A driver may be denied a lease if management deems their attire or appearance unacceptable (ex.: sandals or flip-flops could be considered a safety hazard). However, drivers who take voucher calls are required to wear collared shirts; non-compliance could mean restriction from servicing voucher calls. Airport taxi drivers have a definite dress code, imposed by the airport authority. Drivers are expected to dress in a clean, neat fashion and maintain a high level of personal hygiene. Town car drivers have to wear a suit, with white shirt and tie. Stretcher and wheelchair van drivers have to wear a collared polo shirt, emblazoned with AAA Medex, and a name tag. Again, they are all considered independent contractors, pay a lease and buy their own fuel.

PENALTIES AND FINES

Most of the penalties imposed on the drivers are in the dispatch system, which will be addressed in the next section. Still, there are a couple of fines which need to be mentioned. When a driver is “flashed” by a traffic control device while driving a company vehicle, the company is notified. Once the driver is identified, the company imposes a \$50 fine on the driver, who must then attend a defensive driving class. A second offence is fined \$100, and a third, \$150. These fines are imposed on the driver, regardless of proven guilt or innocence. Another fine is imposed on a driver who rapid meters a call to clear it off the MDT. The company forbids rapid metering and sometimes imposes a \$25 fine on a driver, especially if he/she does it frequently. The issue and reasons for resorting to using a rapid meter is too complex to discuss here, but what other rationale for imposing a fine is there, in either case, if not for the purpose of control through intimidation?

THE PRESENT DISPATCH SYSTEM: MOBILE KNOWLEDGE

In the mid to latter part of 2010, AAA Yellow Cab changed dispatching systems from DDS to Mobile Knowledge. Much to the drivers' consternation, all the features the drivers had fought for, such as: street and block information on the call offering, attributes on the call, and GPS to locate the closest cab to the call, were eliminated. The zones were enlarged to approximately 9 square miles, and a queue system was set up in each zone. Cabs would be dispatched according to the position in the queue, regardless of the distance to the call in the zone or who was closest. No address would be given, and only an approximate distance to the call would be offered. At first, no attributes (cash, credit card, or voucher) were displayed, but were later put on the call offering. Drivers protested they were being forced to accept calls without having any reliable information. Both the company and Mobile Knowledge claimed the system was incapable of using GPS to dispatch calls and give street and block numbers, and, besides, the driver still had the option to reject any call they did not wish to accept. Confidence in the new system dropped dramatically, and many drivers who had accepted vouchers before, went to cash only. It had become too difficult to make a profit on vouchers. It now took much longer to cover calls since no accurate information was initially provided. Competition for cash business began to strain the drivers' ability to earn a living income, and voucher calls piled up on the fare board of the MDT. But nothing seemed to faze the company. It seemed they were bound and determined to force the drivers to accept voucher calls.

Since then, it has become more and more apparent the present system is being used to manipulate and control drivers—i.e. independent contractors—for the exclusive purpose of transporting voucher clients. The system has a feature that apportions calls, a method of distributing fares so each driver has a chance to make some money. It may seem a fair way of doing business and assuring drivers they won't be left out or overlooked by the dispatching system, but upon closer examination it reveals major flaws. Most of this is due to the multitude of penalties included in the system, and the size of the zones. If a driver rejects a call, they lose their position and are placed at the rear of the queue. Distance is the main reason most calls are rejected, but there are a myriad of reasons, such as: uncertainty of location, time factor in reaching the call before it becomes a no-show, call has unwanted attribute or no attribute at all, et al. So when a driver has been sitting a lengthy time, waiting for a call, and the system picks his cab due to the length of inactivity, and the driver rejects the call because it is too far away, the system penalizes him by placing him/her at the rear of the queue. In essence, it takes away his right, as an independent contractor, to reject calls without penalty. Also, the system will suspend a driver if they reject too many calls. It will suspend a driver if they rapid meter or clear the meter too soon, even if it is a short fair. The system will always offer the oldest call holding first, regardless of distance, even if there is a call much closer to the cab. And, almost invariably, the oldest call holding will be a voucher. This makes it difficult for a driver to catch a cash call nearby, without rejecting several offerings, which may lead to a suspension. If a driver bids for a call on the Fare page on the MDT, and rejects the call, the system will not permit him/her to bid again for at least a minute. If a driver wants to update his position frequently, the system will not allow it before a minute has lapsed. If a driver needs... Perhaps it would be better to stop pointing out flaws in the system now, and make an educated guess and, hopefully, an accurate assessment of why the company would want to use a system that works so contrarily to the drivers' ability to

perform efficiently and sustain a living income. It is our contention that the company wants to manipulate and force the drivers into accepting vouchers as their main source of revenue to pay the lease and, possibly, make enough income to continue working. The last clue to this assessment came when the company decided to take cash/credit airport calls and promote a flat rate of \$15.00 from anywhere in the city, up to 10 miles (additional miles over 10 would be charged at the rate of \$1.50 per mile). In essence, airport calls were turned into vouchers. To make matters worse, the calls will be offered only to drivers who have the voucher attribute. The company claims it cannot be done any other way. It can be proved otherwise. Therefore, drivers who take only cash calls are discriminated against and deprived of cash income. The meters are set up for these rates, and drivers are warned there will be consequences if the special rates are not used. What more can be said?

OTHER CAB COMPANIES

The following are brief descriptions of other companies operating in the Tucson area. The first two are major taxi corporations, based in other cities, which also use Mobile Knowledge for dispatching. All the drivers are considered independent contractors, and the descriptions will primarily focus on the major questionable practices where there may be violations of status.

Discount Cab posts no attribute when dispatching calls. When a driver accepts a call, he very unlikely will not be taken off the call, especially if it is a voucher. Since the company has relatively few voucher accounts, the drivers do not protest the fare. There is a dress code for the drivers: collared shirts, no sandals, and no tears or holes in pants. The company has contracts to transport school children, and certain drivers are assigned routes. The routes are planned out, and the drivers have to strictly adhere to them. Drivers pay a base lease, but are charged \$2.00 (.50 for vouchers) for every call they accept off the MDT, even for a no-show. This could easily be considered revenue sharing. They have specific driver(s) who (yard dog) inspect the cabs upon returning to the yard. Drivers are required to wash and vacuum cabs before returning, and pay for the wash out of their pocket.

VIP/FLASH TAXI has no casual 12 hour leases; all leases are 24 hours or weekly. They also have school routes. They have a designated driver who works as a driver coach, and is given a reduced lease. No attribute is put on the call offering; once accepted, the driver cannot turn back the call. There is no reject button on the MDT. The only way a driver can reject a call is by turning on the meter. This renders him/her out of rotation until enough time has elapsed and meter can be turned off without being considered a rapid meter. A rapid meter carries a penalty of one hour. If the driver does not respond to the call offering in a timely manner, he is penalized 3 minutes and moves back in the queue. Collared shirts are required as per client request.

There are a multitude of small cab companies operating in the area. With the exception of single vehicle companies, the vast majority of the companies hire drivers on a commission basis. In other words, the driver is obligated to share revenues with the owners of the vehicles. Enough said.

SUMMARY

As was stated from the beginning of this report, we contend there actually are no independent contractors in the taxi industry. Because of the high transient nature of the business and those employed as cab drivers, it is relatively easy to exploit the definition of independent contractor and apply it to the drivers. The companies feel that the mere option to reject calls makes the drivers independent contractors, but that cannot be further from the truth. The status of independent contractor has made the drivers even more vulnerable and susceptible to exploitation since laws protecting workers under the National Labor Relations Act are not applicable. As a matter of fact, the drivers have nowhere to turn to address grievances and abuses of the classification.

Some issues were not addressed since they do not directly concern the independent contractor status. However, some are important enough to mention here, such as, 1) How driving continuous weekly leases imposes a detrimental effect on the driver's health, 2) How fatigue imposes a safety danger for the driver, his/her passengers, and the general public, 3) The company's policy forbidding sub-leasing to afford a period of rest for the primary driver, 4) The daily struggle to earn a livable income created by the over abundance of taxis due to deregulation and the easy entry of taxis into the market, 5) The legality of the unusually low voucher rates paid to drivers since much of funding comes from governmental agencies.

While no particular item, by itself, presented in the report would be enough to change the status of the drivers from independent contractors to employees, we feel that by the sheer preponderance of evidence presented here, there cannot be any doubt as to the actual status of the drivers. We are employees, and therefore wish to be classified as employees so we can gain the rights accorded to workers under the National Labor Relations Act. We feel that what is contained in this report reinforces our contention that we are employees, and therefore hope it will help us succeed in correcting a dire and insupportable situation.

TUCSON HACKS ASSOCIATION